Re Joseph Ambrose Lee; Mayban Securities Sdn Bhd (previously known as Phileoallied Securites Sdn Bhd) v Dato' Joseph Ambrose Lee

HIGH COURT (KOTA KINABALU) — BANKRUPTCY NOTICE NO K–29–36 OF 2001
LINTON ALBERT J
22 APRIL 2005

Bankruptcy — Practice and procedure — Application to proceed with legal action — Application to proceed bankruptcy action post receiving order at High Court — Whether High Court or official assignee's office had jurisdiction to determine recovery of a sum of RM11.8 million — Whether complicated issues involved were beyond the official asignee's office — Whether concurrent determination of action by the official asignee's office and High Court amounted to duplicity of action — Bankruptcy Act 1967 s 8

Civil Procedure — Jurisdiction — High Court — Application to proceed bankruptcy action post receiving order at High Court — Whether High Court or official assignee's office had jurisdiction to determine recovery of a sum of RM11.8 million — Whether complicated issues involved were beyond the official asignee's office — Whether concurrent determination of action by the official asignee's office and High Court amounted to duplicity of action — Bankruptcy Act 1967 s 8

The applicant, Mayban Securities Sdn Bhd had commenced an action against the respondent, Datu Joseph Ambrose Lee and two other defendants at the High Court at Kuala Lumpur to recover a sum of RM11.8 million. Pursuant to a petition made by a judgment creditor a receiving order was made against the respondent. The applicant duly filed its proof of debt and made an application for leave under s 8 Bankruptcy Act 1967 to proceed with the legal action at the Kuala Lumpur High Court since: (i) the claim involved complicated issues of facts and law requiring technical analysis of evidence and therefore the High Court at Kuala Lumpur was the preferred forum to determine the applicant's claim not the official assignees' office; and (ii) justice required that the respondent be prevented from using the receiving order to resist valid claims made by the applicant and other creditors. The learned deputy registrar allowed the application and the respondent appealed.

Held, allowing the appeal with costs:

Apart from the fact that it concerned a huge sum of money, there was nothing in the affidavits filed by the applicant to establish that the applicant's claim involved complicated issue of law and fact. In any event, there was nothing to suggest that the determination of the applicant's claim was beyond the official assignee's office. The second ground was devoid of merit because there was not a shred of evidence to show that the respondent tried defeat his creditors. It was not open to the applicant to hedge its bets by having its claim concurrently determined by the official assignee's office and the High Court

at Kuala Lumpur; it was caught by the rule that there ought not be duplicity of action (see para 2).

[**Bahasa Malaysia summary**

Pemohon, Mayban Securities Sdn Bhd telah memulakan satu tindakan terhadap responden, Datu Joseph Ambrose Lee dan dua lagi defendan diMahkamah Tinggi Kuala Lumpur untuk menuntut balik satu jumlah RM11.8 juta. Menurut satu petisyen oleh seorang pemiutang penghakiman satu perintah penerimaan telah dibuat terhadap responden. Pemohon memfailkan bukti hutang itu dan membuat permohonan untuk kebenaran dibawah s 8 Akta Kebankrapan 1967 untuk melaksanakan tindakan guaman itu di Mahkamah Tinggi Kuala Lumpur kerana: (i) tuntutan pemohon mengandungi isu-isu fakta dan undang-undang yang rumit yang memerlukan analisa teknikal ke atas keterangan dan oleh itu Mahkamah Tinggi di Kuala Lumpur adalah forum yang lebih sesuai untuk mendengar tuntutan pemohon dan bukan pejabat pegawai pemegang harta; dan (ii): keadilan bermaksud responden dihalang daripada menggunakan perintah penerimaan untuk menolak tuntutan yang sah yang dibuat oleh pemohon dan pemiutang-pemiutang yang lain. Timbalan pendaftar telah membenarkan permohonan itu dan responden merayu.

Diputuskan, membenarkan rayuan itu dengan kos:

Selain daripada fakta bahawa ia berkisah sejumlah wang yang besar, tiada apa-apa dalam afidavit-afidavit yang difailkan oleh pemohon untuk menunjukkan bahawa tuntutan pemohon mengandungi isu-isu fakta dan undang-undang yang rumit. Dalam apa keadaan pun, tiada apa-apa yang mencadangkan bahawa keputusan tidak boleh di buat di pejabat pegawai pemegang harta. Asas kedua tiada merit kerana tidak ada keterangan langsung untuk menunjukkan bahawa responden telah cuba menipu pemiutang-pemiutangnya. Tidak terbuka kepada pemohon untuk membuat tuntutannya serentak di pejabat pegawai pemegang harta dan Mahkamah Tinggi Kuala Lumpur; adalah rukun bahawa tidak boleh ada tindakan pendua (lihat perenggan 2).]

Notes

For cases on practice and procedure generally, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2476–2518.

For cases on the jurisdiction of the High Court, see 2(3) *Mallal's Digest* (4thEd, 2001 Reissue) paras 3724–3775.

Cases referred to

BBMB Securities Sdn Bhd lwn Tan Lay Hiong & yang lain [2002] 7 CLJ 1 (refd)

Legislation referred to

Bankruptcy Act 1967 s 8

Catherine Chin (Catherine Chin & Associates) for the appellant.
Christopher Chong (Lind Willie Wong & Chin) for the respondent.

Linton Albert J:

[1] The applicant, Mayban Securities Sdn Bhd had on 2 April 1998 commenced an action against the respondent, Dato Joseph Ambrose Lee and two other defendants at the High Court at Kuala Lumpur to recover a sum of RM11.8 million. Pursuant to a petition made by a judgment creditor one Ng Chong Kwong, a receiving order was made against the respondent on 22May 2001. The applicant duly filed its proof of debt on 21 February 2003 and on 30 June 2003 made this application for leave under s 8 Bankruptcy Act 1967 to proceed with the legal action at Kuala Lumpur. The learned deputy registrar allowed the application and the respondent appealed. The appeal was allowed and I now give the reasons therefor.

[2] The application for leave was grounded on the following: firstly, the applicant's claim against the respondents involves complicated issues of facts and law requiring technical analysis of evidence and, therefore, it is argued, the High Court at Kuala Lumpur is the preferred forum to determine the applicant's claim not the official assignees' office; and secondly, justice requires that the respondent must be prevented from using the receiving order to resist valid claims made by the applicant and other creditors. These two grounds were accepted by the learned deputy registrar but with respect, the learned deputy registrar's conclusions were ill-founded. In the first place, apart from the fact that it concerns a huge sum of money, there is nothing in the affidavits filed by the applicant to establish that the applicant's claim involves complicated issue of law and fact. In any event, there is nothing to suggest that the determination of the applicant's claim is beyond the official assignee's office. The second ground, premised as it was, on the fact that NgChong Kuong fell short of obtaining an adjudication order against the respondent, is devoid of merit because there is not a shred of evidence to show that the respondent was in cahoots with Ng Chong Kuong to defeat his creditors. Quite apart from the foregoing, it is not open to the applicant to hedge its bets by having its claim concurrently determined by the official assignee's office and the High Court at Kuala Lumpur; it is caught by the rule that there ought not be duplicity of action.

[3] Reliance by the applicant on *BBMB Securities Sdn Bhd lwn Tan Lay Hiong & yang lain* [2002] 7 CLJ 1 is also, in my view, misplaced. Besides the fact that the respondent here is also one of the 11 defendants in that case there are no other similarities. In the *BBMB* case leave was sought from the trial judge after 44 days of hearing, at which point in time the plaintiff was close to closing its

case and the plaintiff would be prejudiced if the trial is aborted at that late stage and the balance of convenience was in favour of proceeding with the plaintiff's action. The issue in this appeal are, therefore, totally different from those in the *BBMB* case and for emphasis, I reproduce the relevant part of the headnote which states:

> Isu penting yang timbul ialah: (i) sama ada bidangkuasa untuk mendengar permohonan terletak kepada Mahkamah Tinggi, Kuala Lumpur atau Mahkamah Tinggi, Kota Kinabalu; (ii) sama ada Mahkamah Tinggi, Kuala Lumpur merupakan forum wajar bagi mendengar permohonan; dan (iii) sama ada tuntutan plaintif harus diselesaikan melalui guaman KL atau melalui proses dan tatacara kebankrapan.

[4] I have, for the reasons aforesaid allowed the appeal with costs and accordingly set aside the decision of the learned deputy registrar.

Appeal allowed with costs.

Reported by D Nesh